OLR Bill Analysis

SB 601

Emergency Certification

AN ACT CONCERNING THE CONNECTICUT STRATEGIC DEFENSE INVESTMENT ACT.

SUMMARY:

This bill establishes a framework for providing financial incentives to eligible aerospace companies engaging in certain helicopter manufacturing projects. To receive incentives, a company must, among other things, (1) have production facilities and a wholly owned subsidiary headquartered in Connecticut; (2) carry out its primary production for U.S. government helicopter programs in a Connecticut facility; and (3) meet annual employment, payroll, supplier spending, and capital investment performance requirements.

Under the bill, an eligible company may receive a total of $140 million in grants and $80 million in sales and use tax offsets for the manufacturing project over a 14-year term. The annual amount of incentives a company receives depends on the extent to which it meets or exceeds specified performance requirements. The bill authorizes a total of $140 million in new state general obligation (GO) bonds for project grants.

The bill allows the Department of Economic and Community Development (DECD) to certify projects and enter into agreements with eligible companies to provide the incentives. It specifies the components the agreements must contain, including the (1) amount of incentives that the company can receive each year, (2) requirements it must meet to qualify for the incentives, and (3) financial penalties it faces if it fails to meet the agreement's requirements. Lastly, the bill requires periodic reports on, and legislative review of, approved projects.

EFFECTIVE DATE: Upon passage

§ 1 — FRAMEWORK

The bill establishes a framework for awarding sales and use tax offsets and grants to eligible taxpayers who engage in an "aerospace manufacturing project."

Eligible Taxpayers

Under the bill, an eligible taxpayer is a company with a place of business in Connecticut or a wholly-owned subsidiary located here.

A company meeting these conditions qualifies for the incentives if, at the time it applies for them:

1. is engaged in the aerospace industry,
2. employs at least 6,000 people in the state,
3. operates its primary helicopter production facility for its current U.S. government programs in Connecticut,
4. plans to bid on a federal contract to begin producing a relatively small number of newly developed and tested helicopters (i.e., low-rate production contract), and
5. has a wholly owned subsidiary with a headquarters and production facilities in Connecticut prior to the bill's effective date.

Under the bill, "company" includes its wholly-owned subsidiary's direct and indirect subsidiaries and affiliates and any limited liability companies the subsidiary directly or indirectly owns.

Aerospace Manufacturing Projects

Under the bill, an aerospace manufacturing project ("project") is one under which an eligible taxpayer meets the following requirements over a minimum 14-year period:

1. carries out its primary production for current U.S. government helicopter programs, as of the date of the taxpayer's assistance

agreement with the state (see below), in a Connecticut facility;

2. minimum job, payroll, capital investment, and supplier spending requirements;
3. capital expenditure targets.

Under the bill, "production" includes procurement, engineering, manufacturing, assembly, integration, and testing.

DECD Certification

DECD must certify whether a project qualifies as an aerospace manufacturing project before the company can receive the bill's incentives. Any company seeking certification must submit an application to the commissioner in a form acceptable to her. The application must describe the project and specify its term and costs. The commissioner may require the company to provide any additional information she needs to certify the company's eligibility.

Only the commissioner may decide whether a company or its project meets the bill's certification requirements. The bill specifies that the commissioner's authority to make such decisions is not a waiver of the state's sovereign immunity and does not authorize a company denied certification to sue the state.

Assistance Agreement

Under the bill, the commissioner may enter into an assistance agreement with a certified company. Her authority to do so expires on January 31, 2017, but she may amend or extend one entered into before that date.

Required Content. The agreement must require the company to, over the agreement's term, meet the annual minimum conditions to qualify for incentives, including maintaining its primary helicopter production facilities and its subsidiary's headquarters in Connecticut, as specified in the agreement, and meeting specified levels of employees, payroll, and supplier spending ("minimum requirements"). The agreement must also:

1. describe the project and indicate how long it will take the company to complete it;
2. specify the minimum requirements the company must meet each state fiscal year during the project's term (i.e., compliance year) ;
3. state the company's commitment to maintain its subsidiary's headquarters and operate its primary helicopter production facility for current U.S. government programs, as of the agreement's date, in Connecticut;
4. identify the amount of grants and sales and use tax offsets for which the company is eligible, including the terms and conditions it must meet to receive these incentives;
5. Specify the terms and conditions for repaying grants and paying any penalties for failing to comply with the agreement;
6. require the company to provide the commissioner with specified information and access to the company's relevant records to verify their accuracy;
7. specify the terms and conditions for repaying any sales and use tax offsets and any other required financial penalties the commissioner may impose on the company for failing to meet the agreement's terms;
8. specify how the company must notify the commissioner about any disputes under the agreement; and
9. include any other terms and conditions the commissioner requires.

Sales and Use Tax Offset Administration. The agreement may include provisions governing the sales and use tax offsets. The commissioner, in consultation with the revenue services commissioner, must determine the form, timing, and manner for providing the offsets. The offsets must be calculated after deducting any applicable statutory sales and use tax exemptions applicable to the company's purchase. The bill specifies that it does not limit a company's ability to claim the sales and use tax exemptions which it otherwise qualifies for under the law.

Dispute Resolution

In the event of a disputed claim under the assistance agreement, a company may sue the state in the Hartford Superior Court after notifying the commissioner as the agreement requires. The company must bring the action within two years of this notice. The bill reserves all legal defenses to the state except sovereign immunity.

Conflicts with Other Statutes

The bill specifies that the agreement's provisions supersede the laws (1) limiting the amount of assistance the commissioner may award under the Manufacturing Assistance Act (MAA), (2) requiring businesses to provide security for any MAA financing they receive, and (3) requiring legislative approval for economic development assistance exceeding specified thresholds.

Reporting

The bill requires the commissioner to include in the department's annual report information on any company she assisted under the bill. She must identify the number of projects awarded benefits and their status, and the extent to which the companies achieved their job, payroll, capital investment, and supplier spending targets.

Legislative Review

The bill creates a procedure that requires the Commerce and Finance, Revenue and Bonding committees periodically to review the status of approved aerospace manufacturing projects. Under the procedure, the DECD commissioner must submit three-year status reports to the committees, beginning October 1, 2012. The report must indicate the number and status of each approved project and identify the employment, payroll, supplier spend, and capital expenditure levels they achieved.

The committees must conduct an information hearing on each report, during which the commissioner must present the report and take questions from committee members.

Additional Legislation

The commissioner must analyze and may seek additional legislative approval, as appropriate, programs that provide sales and use tax offsets for creating and retaining jobs and stimulating business growth.

§ 1 — INCENTIVES

The bill establishes two types of incentives, grants and sales and use tax offsets, for companies undertaking certified aerospace manufacturing projects subject to an assistance agreement with DECD. The grants and sales and use tax offsets are tied to the company meeting the assistance agreement's minimum requirements, as described above.

Grants

The bill allows the company to qualify for four grants (employment, payroll, supplier spend, and capital expenditures) in each year of the assistance agreement (i.e., compliance year) and authorizes the DECD commissioner to award up to $140 million in grant payments over the assistance agreement's 14-year term. The maximum annual grant for each grant category is $2,142,857 ($8,571,428 across all four categories).

The bill establishes base level (i.e., minimum) criteria for employment, payroll, and supplier spend that the company must meet to receive any of the four grant payments. It also establishes target criteria for all four grant categories and the formulas for determining the grant amounts. The formulas for calculating grant amounts are based on the extent to which the company meets the specified targets for each compliance year, which is the same as the state's fiscal year

Table 1 shows the base levels and targets for each grant category.

Table 1: Minimum Requirements and Targets for Employment, Payroll, Supplier Spend, and Capital Expenditures Grants

Compliance Year	Employment Grant		Payroll Grant		Supplier Spend Grant		Capital Expenditures Grant
	Base Level	Target	Base Level (millions)	Target (millions)	Base Level (millions)	Target (millions)	Target (millions)
19	6,500	7,084	$611.0	$681.0	$300.0	$353.6	$76.0
20	6,500	6,684	611.0	655.5	300.0	328.5	76.0
21	6,500	6,582	611.0	658.5	300.0	333.1	76.0
22	6,500	6,696	611.0	680.0	300.0	362.7	76.0
23	6,500	6,978	611.0	718.5	300.0	400.0	78.0
24	7,000	7,276	700.0	763.0	300.0	433.7	79.0
25	7,000	7,537	700.0	806.0	410.0	469.7	81.0
26	7,000	7,720	700.0	842.0	410.0	497.8	82.0
27	7,000	7,773	700.0	864.5	410.0	522.7	84.0
28	7,000	7,773	700.0	882.0	410.0	548.9	86.0
29	7,000	7,773	700.0	900.0	410.0	576.3	87.0
30	7,000	7,794	700.0	920.5	470.0	605.1	89.0
31	7,000	7,924	700.0	954.5	470.0	635.4	91.0
32	7,000	8,032	700.0	986.8	470.0	667.1	93.0

Base Levels. The grants are contingent on the company meeting the bill's base levels for employment, payroll, and supplier spend, as shown in Table 1.

Under the bill, the employee base level is the company's average number of full-time employees (FTEs) in Connecticut (i.e., those working at least 35 hours per week, excluding temporary or seasonal workers or anyone who does not receive a federal Form W-2 from the company). The average number of FTEs for each compliance year is calculated by adding the number of FTEs at the end of each quarter and dividing the total by four.

The payroll base level is the company's aggregate gross pay for FTEs in Connecticut for each compliance year.

The supplier spend base level is the amount the wholly owned subsidiary spends purchasing goods and services from its supply companies for each compliance year (i.e., total annual spend). The bill defines a "supply company" as a commercial business with a "regular place of business" in Connecticut that supplies goods and services needed to support the (1) manufacturing of company products or (2) company operations. It excludes local, state, or federal revenue collection or taxing entities. A "regular place of business" is a Connecticut office, factory, warehouse or other space at which a supplier regularly and systematically does business in its own name through its employees (1) in regular attendance there and (2) carrying on the supplier's business in its own name. It excludes (1) business locations for statutory agents for service of process; (2) temporary offices used only for the duration of the contract; and (3) offices maintained, occupied, and used by a supplier's affiliate.

Capital expenditures are the bona fide costs to the wholly owned subsidiary and its subsidiaries for (1) acquiring land, buildings, machinery, equipment, or any combination thereof; (2) making site and infrastructure improvements; (3) planning; (4) eligible research and development (R&D), including developing new products and markets (i.e., spending eligible for the state's R&D tax credit; see BACKGROUND); and (5) developing diversification strategies, including regional diversification strategies and hiring consultants needed to complete plans and strategies.

If an expenditure qualifies for both the supplier spend base level and the capital expenditures target, the company may choose to count the expenditure toward either, but not both, of the categories.

Calculating Grant Amounts. In order to receive any of the four grants, the company must meet the minimum requirements for a compliance year.

For the employment, payroll, and supplier spend grants, the commissioner must award the maximum grant for each of the categories if the company achieves the applicable target for each category. If the company achieves an employment, payroll, or supplier spend level below the target (but above the base level), the DECD commissioner must reduce the maximum grant amount based on the proportion of the target the taxpayer achieved. The bill specifies the formula for calculating the reduction: the maximum grant minus an amount calculated by a fraction, the numerator of which is the target level minus the actual level achieved and the denominator is the target level minus the base level.

For the capital expenditures grant, the DECD commissioner must award the company the maximum grant if it has achieved 90% of the expenditure target for that year.

Carry Forward of Supplier Spend and Capital Expenditures Exceeding Target Levels. The bill allows the wholly owned subsidiary to annually carry forward supplier spend and capital expenditure amounts that exceed the targets for these categories. It may carry forward the excess amounts on a first earned, first used basis and apply the difference in any of the subsequent three compliance years.

Certified Amounts. The bill requires the company to certify its actual employment, payroll, supplier spend, and capital expenditure amounts to the DECD commissioner, in accordance with the assistance agreement's requirements and subject to a third-party audit performed according to DECD's audit guide.

Performance Incentive Grants. The bill allows the company to qualify for an annual performance incentive grant, up to $20 million over the assistance agreement's term, for any year in which it meets the minimum requirements, exceeds the employment and payroll targets, and meets the requirements for average payroll per employee that are defined in the assistance agreement. Under the bill, each annual grant equals $3,500 per employee that exceeds the target level for the compliance year, up to the maximum amounts shown in Table 2.

Table 2: Annual Maximum Performance Incentive Grants

Compliance Year	*Maximum Total Grant Per Year*	*Number of Jobs Required to Receive Maximum Performance Incentive Grant*
19	$350,000	100
20	525,000	150
21	875,000	250
22	1,050,000	300
23	1,225,000	350
24	1,400,000	400
25	1,750,000	500
26	1,750,000	500
27	1,750,000	500
28	1,750,000	500
29	1,800,000	515
30	1,925,000	550
31	1,925,000	550
32	1,925,000	550

Production Schedule Changes. The bill authorizes the DECD commissioner to deviate from the bill's tables establishing the schedule, maximum amounts, and base and target levels for the grants if federal government action requires changes to the production schedule (presumably the schedule under the company's federal contract for annually producing helicopters). The commissioner must (1) make changes proportional to the revised production schedule and (2) within 15 days file a report describing the changes with the General Assembly's committees of cognizance.

Sales and Use Tax Offsets

The bill allows the DECD commissioner to authorize up to $5.714 million per year in state sales and use tax offsets for a company's state-certified aerospace manufacturing project ($80 million total over the assistance agreement's term). Under the bill, if the company's actual annual sales and use tax liability is less than $5.714 million, it may carry forward, for up to three years, the difference between $5.714 million, plus any carryforward from prior years, and its actual liability for the compliance year, after applying other exemptions. It must use the carryforward amount on a first earned, first used basis, before using any current year offset.

The DECD commissioner must notify the revenue services commissioner at the end of each compliance year as to whether the company (1) has met all of the minimum requirements necessary to qualify for the offset or (2) must repay the offset amount in accordance with the assistance agreement's terms.

§ 2 — BOND AUTHORIZATION

The bill authorizes up to $140 million in state GO bonds over a 16-year period, as shown in Table 3, for the aerospace manufacturing project grants. Any issuance costs and capitalized interest may be added to the annual authorizations.

Table 3: Annual Bond Authorizations under the Bill

FY	*Amount*
17	$8,921,436
20	9,096,428
21	9,446,428
22	9,621,428
23	9,796,428
24	9,971,428
25	10,321,428
26	10,321,428
27	10,321,428
28	10,321,428
29	10,371,428
30	10,496,428
31	10,496,428
32	10,496,428

Bond Commission Approval

The bond commission must authorize the total bond issuance. The bill requires DECD to enter into a memorandum of understanding (MOU) with the Office of Policy and Management secretary and the state treasurer regarding the bond issuance, including the extent that federal, private, or other available funds should be added to the bond proceeds. The bond commission must approve the MOU, which satisfies the standard approval requirements under the State General Obligation Bond Procedure act. The act deems the principal amount of the authorized bonds to be an appropriation and allocation of the bond amounts. The bonds are subject to standard statutory conditions.

BACKGROUND

Eligible R&D Expenditures

The state's R&D credit generally applies to (1) federally deductible R&D spending a business incurs and (2) qualifying basic research payments it makes that are eligible for a federal R&D tax credit. In both cases, the expenditures or payments must (1) be paid or incurred by the business for R&D and basic research conducted in Connecticut and (2) not be funded by any grant or contract with a public or private entity, unless the entity is included in a combined return with the business paying or incurring the expenses. In addition, the R&D spending must exclude any R&D expenses that the business claims under the research and experimental expenditures (R&E) tax credit program.